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SUMMARY OF ENGLISH CASES.

Watney Combe, Reid and Company *v.* **Berners**: (1915) A. C. 885.

Statute—Construction—Intention of legislature—To be inferred from language used—Consideration of consequences unsafe—Finance Act 1912 Sec. 2.

Per Viscount Haldane, L.C.—The intention (of the legislature) must be found in the language finally adopted in the statutes under construction and in that language alone. No doubt general words may in certain cases properly be interpreted as having a meaning or scope other than literal or usual meaning. They may be so interpreted where the scheme appearing from the language of the legislature, read in its entirety points to consistency as requiring the modification of what would be the meaning apart from any context or apart from the purpose of legislation as appearing from the words which the legislature had used or apart from the general law.

Per Lord Parmoor.—The consideration of consequences is an unsafe interpreter of a statutory enactment. There is no case in which it is more important to remember this caution than in the interpretation of a section in a taxing act, expressed in general terms, applicable to a large number of varying business arrangements. The Court has seldom sufficient information to know accurately to what extent the suggested anomalies occur in practice or what weight should be attached to selected instances.

Their Lordships accordingly declined to accept the construction put upon a section of the Finance Act by the Court of Appeal on its view as to the intention of the legislature. The section provided that "where the licensed premises are held under a lease made before the Act, which does not contain any covenant by the lessee to obtain a supply of the intoxicating liquor from the grantor, the lessee shall be entitled to recover a portion of the increase in duty from the grantor." The question before the House was whether a mesne lessee who was not the person in occupation or the holder of a license (his sub-lessee being the holder

of the license and in occupation of the premises) was entitled to the benefit of this provision. The Court of Appeal held that the legislature intended to benefit only the licensee in possession who had to bear the additional burden.

Eastwood v. **Ashton**: (1915) A. C. 900.

Vendor and *purchaser*—*Conveyance*—*Plan*—Falsa demonstratio—*Implied covenants of title*—*Bar by limitation*—*If within.*

Where there are several descriptions in a deed which when evidence of surrounding facts is admitted, are not consistent one with the other, there is no general rule by which the Court can decide which description ought to prevail. But *ceteris paribus* the more detailed and precise the description the more likely it is to accord with the real intention of the parties. The maxim *falsa demonstratio non nocet* is useless unless and until the Court has made up its mind as to which of two or more conflicting descriptions ought under the circumstances, to be considered the true description. The order in which the conflicting descriptions occur is not at all conclusive.

In a sale-deed there were various descriptions such as acreage, name of the farm, of the occupant none of them being however wholly accurate on any hypothesis but there was a recital in the document that the premises were more particularly described in the plan attached. *Held* that the description given in the plan should prevail.

Adverse possession for over the statutory period by a stranger is a defect of title for which the vendor is liable for breach of the implied covenant for title under S. 7 Cl. 1 (A) of the Conveyancing Act.

Pate *v.* **Pate**, (1915) A. C. 1100.

Ceylon Ordinance—*Partnership*—*Writing*—*Requirement of*—Stare decisis.

Under a Ceylon Ordinance "no promise contract, bargain or agreement, unless it be in writing and signed by the party making the same, etc., shall be of force for establishing a partnership where the capital exceeds 100 £. provided that this shall not be construed to prevent third parties from suing partners, etc." Plaintiff in the case alleged that there was such a partnership which carried on business for some time when it was dissolved, that the defendant was in possession of assets notwithstanding the

dissolution and claimed account, etc. The Ceylon Courts held that in such a case, the ordinance did not apply. There was a course of decisions to that effect. Their Lordships held that the Ceylon decisions were wrong and that the plaintiff could not prove the partnership.

To the argument of *stare decisis*, their Lordships answer "Their Lordships think not only that their decision was erroneous but also that even after the interval of 44 years it ought to be overruled. The present is not one of those cases in which inveterate error is left undisturbed because titles and transactions have been founded on it which it would be unjust to disturb. There can be few partnerships in Ceylon, still in operation or unliquidated in which writing has been dispensed with on the faith of these decisions. If parties choose to disregard so ordinary and simple a formality as the ordinance requires, there is no hardship in learning them to take the consequences nor is it in any case sound to misconstrue a statute for fear that in particular instances, some hardship may result. That is a matter for the legislature, not for the Courts." Their Lordships add "whenever the law enacts that the truth shall be proved by one form of testimony only and not by all admissible and available forms, there is peril of doing particular injustice for the sake of some general good and even of enabling some rogue to cloak his fraud by taking advantage of a statutory prescription the policy of which was the prevention of fraud. This the legislature must be taken to have weighed before enacting the ordinance. All that remains for judicial determination is its true meaning."

Fred Wilkins and Brothers *v.* Weaver, (1915) 2 Ch. 322.

Contract of service—Master and servant—Breach of contract —Employment by subsequent master with notice—Damages.

Where an employee, who had entered into a contract of service for a fixed term with his master, engaging to devote himself solely in the master's business and not in any way to be connected with any other business without the consent of the master with a prohibition against disclosing trade secrets and confidential information, in breach of the contract enters the service of another who was given notice of the contract by the former master, the person who engages him later is liable to the former master if he keeps the employee in service after notice of the former contract which the employee had broken.

In re **Lind Industrials Finance Syndicate** *v.* **Lind,** (1915) 2 Ch. 345. (C. A.)

Mortgage—Expectant share of next of kin of living person—Bankruptcy and discharge before falling into possession—Effect on mortgage.

Where a person who is the presumptive next of kin of a living person mortgages his expectant share and subsequently is adjudicated a bankrupt and discharged in bankruptcy and the mortgagee does not prove in bankruptcy, the adjudication and discharge do not extinguish the mortgage; and a person who takes an assignment of the expectant share subsequent to the discharge does not take the property when it falls in possession free from the mortgage.

A mortgage of an expectant share does not merely create a contractual obligation which is extinguished by the discharge in bankruptcy of the mortgagor, but creates an interest in the property in equity when it falls in possession and as such is not extinguished by the bankruptcy and discharge.

H. Blacklock and Co., Limited *v.* **C. Arthur Pearson, Limited,** (1915) 2 Ch. 376.

Copyright—Index to Railway stations in Bradshaw's Guide—Infringement—Monthly publication—Latest publication whether a new edition of an earlier publication whose copyright has expired—Copyright Act, 1911 Ss. 1, 2, 7, 35.

The plaintiffs are the publishers and owners of the copyright in Bradshaw's General Railway and Steam Navigation Guide, a monthly publication with a complete index of Railway stations in Great Britain and Ireland. The defendants for their purpose copied some portions of the index to Bradshaw's Guide, of the publications for years for which if the plaintiffs had a copyright had not expired by efflux of time. In an action by the plaintiffs for the infringements of copyright with regard to portions of the index.

Held (1) Under the Copyright Act 1911, copyright subsists in every original "literary work" which term includes compilations; the list of names contained in the index to Bradshaw is entitled to copyright as much as any other part of the publication.

(2) The index to the publication of January 1914 is not merely a new edition within the meaning of the copyright law, of

the publication for a year whose copyright has expired. The Bradshaw of the month is a new work. A book which consists of a specification of the conditions at the present moment of a constantly changing subject matter is a new work even though some of the particulars given may not have altered from what they were stated to be years before.

Becker, Gray and Co. v. London Assurance Corporation, (1915) 3 K. B. 410.

Marine Insurance—Policy—Construction—Peril of capture—What constitutes—Attempt to avoid capture—Loss of venture—Liability for.

In an action against underwriters on goods under a policy on a voyage from Calcutta to Hamburg in a German Steamer, the question arose whether the goods were lost by any of the perils mentioned in the policy and in particular whether they were lost owing to men-of-war. The policy was against the usual perils including men-of-war, enemies, takings at sea, and restraint of princes. The facts found were that, while the goods were at sea war broke out between Great Britain and Germany and that, on being informed of that fact, the master put into a neutral port in order to avoid the risk of capture by hostile cruisers and with the intention of suspending the prosecution of the voyage until after the termination of the war. It was also found that there was no chasing of the ship by a hostile man-of-war, that no such man-of war was sighted by it, that the ship was not driven into the neutral port by the intelligence of a particular man-of-war being in the neighbourhood, and that the master went into that port because he feared that if he prosecutes his voyage the ship would be captured. *Held,* that the goods were not lost by a peril insured against.

Although to constitute a loss by capture a *de facto* capture is not absolutely necessary, an attempt to avoid capture is not the same as a loss by capture. The peril must have begun to operate or must operate directly and not circuitously.

Rex v. Judge Radcliffe. Oxfordshire County Council Ex Parte. (1915) 3 K. B. 418.

Words—"Without visible means of support"—Meaning—Mental Deficiency Act, 1913 (3 and 4 Geo. 5 C. 28), Ss. 1, 2, 6.

Where the question arose as to whether a "defective" was "without visible means of support" within the meaning of the section of a statute which ran as follows "a person who is a defective may be dealt with under this Act . . if in addition to being a defective he is a person who is found neglected, abandoned, or *without visible means of support*, or cruelly treated," *held* that the words were applicable to cases where the defective was in fact not being maintained or taken care of, or, where, at all events, those who had taken care of him were turning him adrift or threatening to do so and that they did not apply to the case of a defective who was in a comfortable home and was being properly taken care of, although he might have no property and those maintaining him might be under no obligation to do so.

JOTTINGS AND CUTTINGS.

New Career for Women.—A new career for women is suggested by Mr. Hubert Hall, Assistant Keeper of the Public Records. In his opinion there is a great opening during the war for the employment of women as archivists. Certain operations of the archivist could be more neatly and effectively performed by women than by men, and he hoped to see at least one woman in every office for the preservation of public records.

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In Burton's "Book Hunter"—an old friend of all who love to potter in regions bibliographic—is a note which has always delighted us. "A late venerable practitioner in a humble department of the law," says the author, "who wanted to write a book, and was recommended to try his hand at a translation of Latin law maxims as a thing much wanted, was considerably puzzled by the maxim, *Catella realis non potest legari*; nor was he quite relieved when he turned up his Ainsworth and found that '*catella*' means a 'little puppy.' There was nothing for it, however, but obedience, so that he had to give currency to the remarkable principle of law that 'a genuine little whelp cannot be left in legacy.' He also translated *Messis sequitur sementem*, with a fine simplicity, into 'Harvest follows the seedtime'; and *Actor sequitur forum rei* he made 'The agent must be in court when the case is going on.' Copies of the book containing these gems are exceedingly rare, some malicious person having put the author up to

their absurdity." Burton does not disclose the name of the "late venerable practitioner" from whose work he quotes, and "we in dreams behold the Hebrides" and in our slumber fancy we have found a copy of this rarity in the fourpenny box. In our waking hours, however, no such success has attended our explorations, and we had regretfully come to the conclusion that, like some other good things, the volume was mythical—that, as the lady said, who must have been related to the "late venerable practitioner," the book existed only "in nudibus."

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But a writer in the *Law Times* has discovered that in naked truth the volume does exist. He has discovered that the author in question was one Peter Halkerston, a Scottish lawyer, who brought out his collection of maxims in 1823. He remarks in his preface that "With regard to the translation it does not become me to say much. I trust, however, that on the whole it will be found pretty correct"! How correct may partially be gauged by the examples cited by Burton, who, however, does not cite the first one accurately; the maxim as given by Halkerston being *Catella juste possessa amitti non possunt*, which is delightfully translated thus: "A little whelp (perhaps cattle) lawfully possessed cannot be lost"! Many other instances of Halkerston's translations are equally funny. Here are a few: *Dolus versatur in generalibus*, which is rendered, "Craft is inconsistent in general": *Rexest mixta persona* becomes "The King is a mixed character"; *Communis error facit jus* is turned into 'A common error makes law necessary." A treasure to the connoisseur of legal literature.

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A Chinese Witness.—Examination on the *voir dire* is always apt to prove amusing. We take the following investigation of the competence of a Chinese witness from an American contemporary:—"Well, sir," said the advocate, "explain to the Court the nature of an oath." "Suppose me tella lie," replied See Yup, "when I go die make, me a heap of tubble, and before that I catch plenty tlubble here for Melican judge send me Stlates plison." "Humph," said the advocate, "suppose you tell the truth, what then?" "Suppose I tella tluth, Melican judge send your client Whisky Jim to Stlates plison." "The witness," said the judge blandly, "is clearly qualified. Let him be sworn."

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A dangerous author Kipling! His famous line, "The captains and the kings depart," was lately censored in this country (because no kings were present on the occasion referred to in the despatch); and now the wife of a gunner in the U.S.A. navy is suing for a separation because he sent her a marked copy of Kipling's "Vampire." The implication contained in the sending of Kipling's volume to her is in her view the quintessence of cruelty. "A rag and a bone and a hank of hair" is the not too flattering description of the lady in that poem if we recollect aright, and we have seen innuendoes constructed from less promising material. As a basis for a separation decree the material in this country at any rate is rather thin, since in *Russell* v. *Russell* (1897) A. C. 395, the House of Lords accepted the argument of learned counsel to the effect that "mere insult not of an aggravated character must be treated as being an incident of matrimony" and is not legally cruel.

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The Authority of the Schoolmaster. —A striking instance of the supposed conflict between Law and Justice, or rather between what may be regarded as settled principles governing the relations of persons under the law as recognised by the Courts and the fluctuating opinions of people outside, is afforded by the action by a schoolboy against his master to recover damages for a caning, which was tried in the King's Bench last week (*Nunn* v. *Selwyn*; October 20, 21) The boy was given leave of absence for a day to see his brother, who was going away on military service, but this was on the express promise that he would return that night. He did not return till the following evening, having been sent by his father to a place in the country where the brother was staying, and when he got back to school he was submitted for his breach of the regulations and of his undertaking to a 'ceremonial' caning by the headmaster, for which he now claimed, what he described in his diary as his 'vengeance.' There was no suggestion of indirect motive or want of *bona fides* in the exercise of his judgment, on the part of the headmaster, nor was there any complaint of excess in the degree of punishment—the only question was whether the master had a right in the circumstances to punish the boy at all. Mr. Justice Ridley, who tried the action with a special jury, expressed his personal opinion on this subject at a very early stage of the case; and when he came

to sum up he said that, while there was no question that the action of the defendant had been honest, it was for the jury to say whether his conduct had been 'reasonable or arbitrary.' The jury having found a verdict for the plaintiff on which a stay of execution was granted, it will be for the Court of Appeal to say whether the direction of the learned judge was adequate, or whether the limitations of the right to punish fixed by Chief Justice Cockburn half a century ago in a schoolmaster's case (*Reg* v. *Hopley* 1860) are not to be preferred. Those limitations are that punishment must not be administered 'for the gratification of passion or of rage,' and it must not be 'immoderate and excessive in its nature or degree.' Beyond that the old rule laid down in Blackstone (*Commentaries*, Vol. 1, 453) still holds—the tutor or schoolmaster stands *in loco parentis* 'and has such a portion of the power of the parent committed to his charge, namely, that of restraint and correction, as may be necessary to answer the purposes for which he is employed.' That this power of correction extends to cases where the offence is committed outside the school has also been established in a comparatively recent case (*Cleary* v. *Cooth* 1893); and as all these settled rules seem to be challenged by the result in this case, we shall await with interest the decision of the Court of Appeal on the delicate problems of parental dispensation versus school discipline which the contest involves.

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Miscellany.—Mr. Justice Darling contributes to the November number of the *Cornhill Magazine* some verses entitled 'A Letter from a Vacation Judge.' They are a reply to a 'tempting invitation' to spend a holiday with a friend in the country who has offered him the pleasures of hunting and shooting:—

Your forest hounds may chase the deer,—
  From turnips to the stubble
The partridge fly—I think I hear
  Your right and left speak double,—
Yet I must mark the well-worn tale,
  As though to me a new one,
Composed and learnt by rogues on bail,
  And vouched by friends a true one.

An alibi to prove, the thief
 Was watching with his brother
Beside her bedside—plunged in grief
 For their expiring mother.

Most of the modern poets of the Bench have been translators. Lord Bowen's literary gifts found expression in his translation of the 'Æneid'; Mr. Justice Denman's most notable achievements as a poet were his translation of Gray's 'Elegy' into Greek elegiac verse and his rendering of the first book of the 'Iliad' into Latin; Lord Justice Kennedy turned the 'Plutus' of Aristophanes into English verse; while Mr. Justice Ridley is the author of a translation of Lucan's 'Pharsalia.' Many other Judges have written occasional verse, Blackstone and Lord Selborne among the number. The most famous judicial author of modern times was Mr. Justice Talfourd, whose tragedy 'Ion' was produced at Sadler's Wells two years after he was raised to the Bench, and whose sudden death in the Assize Court at Stafford is the theme of the best of Mr. Justice Darling's poems, 'On the Oxford Circuit.'

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What is the origin of the 'patriarchal and apostolical number of twelve' in the administration of justice, which Mr. Justice Ridley, owing to the shortage of jurors, has expressed a desire to reduce? Coke thought that it was enveloped in mystery, and lesser mortals (says the *Globe*) need not worry to inquire where he was baffled. What is certain is that, firmly established as the 'legal number' has become, it was not always treated as sacred. By a special statute of Henry VIII., for instance, juries of six were allowed in Wales, and a case tried in 1652, thought it resulted in a declaration that a Cornish custom of having similar juries was bad, showed that the custom had obtained pretty widely in the county. Grand juries are nearly twice as large as ordinary juries, and so are juries at lunacy inquiries; while the number of the County Court jury which formerly was five, has recently been fixed at eight. So that there is nothing sacred, after all, about the 'patriarchal and apostolical number' though whether it is desirable to change it, either in civil or criminal cases, is a question on which legal authorites are much divided.

BOOK REVIEWS.

CASPERZ ON ESTOPPEL—FOURTH EDITION, 1915, *Butterworth & Co., (India) Limited, Calcutta.*

The scheme and merits of this book are already too well-known to the profession to require any lengthy description or commendation from us. It is the only work on the subject that incorporates both the Indian and the English case law and, as such, it has already obtained a wide popularity; while the accuracy of statement and thoroughness of treatment which characterise the book have brought for it a well deserved recognition as an authoritative text-book. The demand for a new edition within six years of the last one is ample proof of the want as well as the utility of the book. The last edition was a complete revision of the previous one, but the present is substantially on the same lines as the last one, the authorities however being brought up to date, *i. e.*, down to October 1915. We heartily commend this edition to the profession.

THE ALL INDIA CIVIL COURT MANUAL, *Local Acts—Central Provinces, Law Printing House, Mount Road.*

We congratulate the publishers for the Central Provinces Code. The legal profession will find it a fitting supplement to the Local Acts of other provinces and as supplying a real want.

SANJIVA RAU'S *Indian Contract Act (Second Edition)' Law Printing House, Mount Road.*

This book brings up to date Sanjiva Rau's publication of the enactment in 1906 which was so popular with the legal profession. As is very properly printed out in the preface, this book occupies a middle place between the condensed digest and the learned treatises in the subject of contracts. The references to cases decided by the Chief Courts enhance the value of the publication by making it useful to practitioners in the provinces under Chief Courts.

SANJIVA RAU'S *All India Digest, Criminal (1835 to 1915) Vol. I, Law Printing House, Madras.*

The rapidity with which the first edition of this publication has run out bears ample testimony to the great need felt by lawyer

for this publication. We need only point out that the cases have been brought down to 1915 and the work has been thoroughly revised keeping its utility to the bar steadily in view.

THE OFFICIAL DIARY, 1916—THE LAWYER'S COMPANION DIARY, 1916, *Law Printing House, Madras.*

We have very great pleasure in announcing to the legal profession that the Law Printing House have brought out their excellent diaries for 1906. These diaries contain a large amount of useful legal information necessary for the daily use of the lawyer and his clerk. The size of the diaries has been increased, chiefly owing to the addition of pages for the year 1917 so as to enable practitioners to note up the prospective engagements of the coming year. We have every reason to believe that the diaries for 1916 will maintain the high level of usefulness as those for the preceding years.

[*End of Vol. XXIX.*]